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IN THE
Supreme Court of the United States

TERM, 194

No. **826**

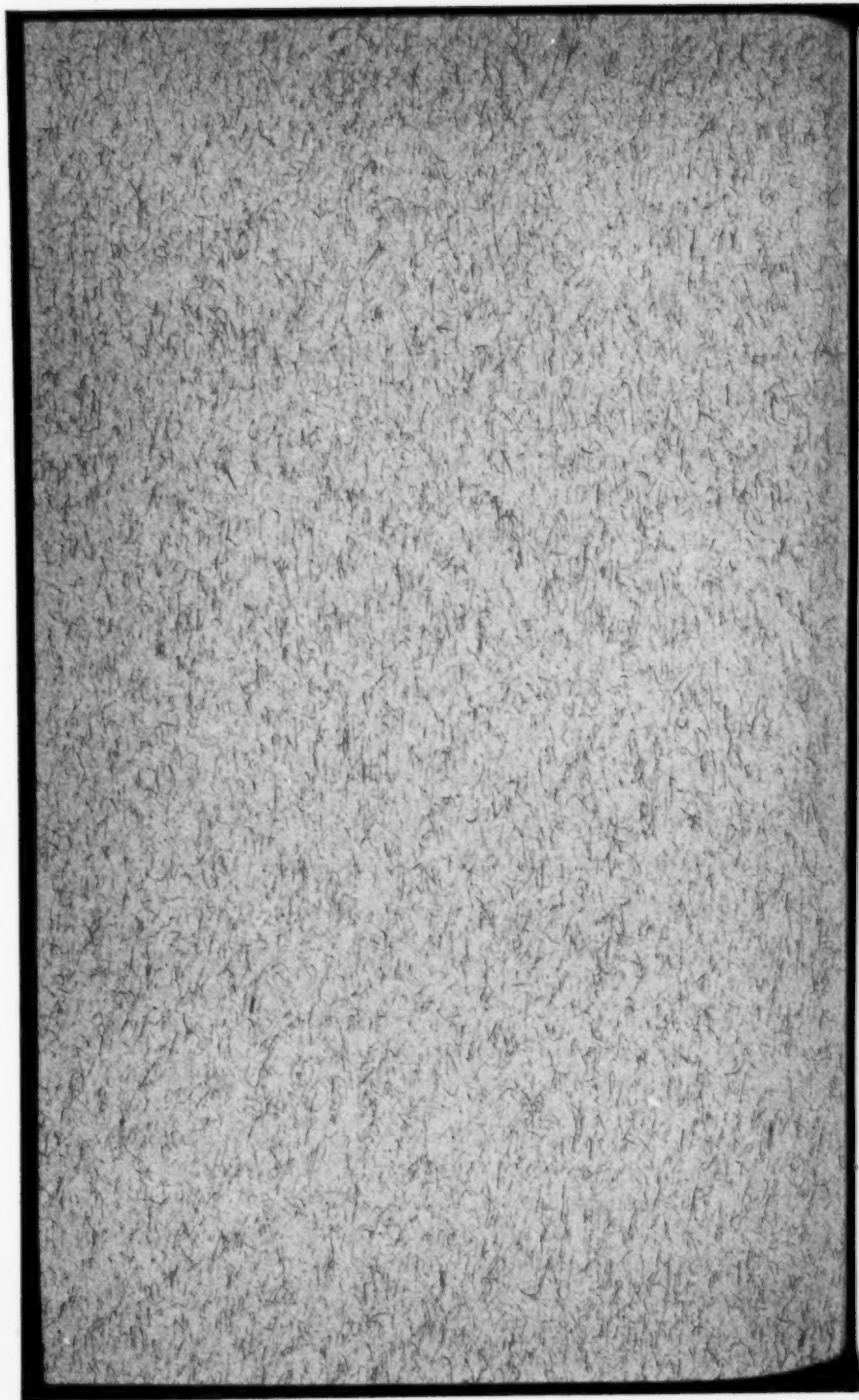
WILLIAM LEITHOLD and EMILY LEITHOLD, Individu-
ally and as Co-Partners trading as **CUSTOM MAID**
BRASSIERE COMPANY,
Petitioners,

vs.

CHESTER BOWLES, ADMINISTRATOR, OFFICE OF
PRICE ADMINISTRATION,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT AND BRIEF IN SUP-
SUPPORT THEREOF.

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STATUTES AND REGULATIONS INVOLVED

Emergency Price Control Act of 1942 (56 Stat. 23) as amended, 50 U.S.C.A. App. Section 925(a), 56 Stat. 33: Sec. 4(a) (50 U.S.C.A. App. Section 904(a), 56 Stat. 28): Section 20(a) (50 U.S.C.A. App. Section 902(a) (56 Stat. 28)	8
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**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT AND BRIEF IN SUP-
PORT THEREOF.**

*To the Honorable, the Justices of the Supreme Court of
the United States:*

The Petition of William Leithold and Emily Leithold,
individually and as Co-Partners, trading as Custom Maid

Brassiere Company, by their attorneys, Shapiro & Shapiro, Esquires, respectfully prays that a Writ of Certiorari issue to review the Order of the Circuit Court of Appeals for the Third Circuit entered December 27, 1945, affirming a judgment, order and decree entered by the District Court of the United States for the Eastern District of Pennsylvania.

List of abbreviations used hereinafter:

Office of Price Administration	OPA
General Maximum Price Regulation	GMPR
Maximum Price Regulation No. 220	MPR 220
National Labor Relations Board	NLRB

Statement of the Matter Involved.

This case involves the propriety of a decree enjoining defendants from violating price-ceilings fixed by OPA regulations, where defendants violated *record-keeping provisions* of the applicable regulations, but where there is neither allegation nor proof that the defendants violated or intended or threatened to violate *price-ceiling provisions* of those regulations. More narrowly, the question is whether the two types of acts are so related as to justify a broad injunction which includes a prohibition against acts not committed or threatened.

The Facts.

Plaintiff, Administrator of OPA, filed a Complaint seeking injunctive relief against defendants, manufacturers of brassieres, alleging that they had failed to maintain records required by GMPR, and failed to file with OPA information required by MPR 220 (R. 6a). There was no allegation that defendants violated or intended or threatened to violate any OPA price-ceiling.

In the course of the proceedings defendants admitted failure to keep the records required by GMPR, and failure to supply the information required by MPR 220; (R. 48a) but before hearing defendants complied with those provisions (R. 11a-12a). Defendants, however, have always kept the normal and usual business records (R. 42a, 45a).

There was no evidence that the defendants had violated or intended or threatened to violate price ceilings.

At the instance of the plaintiff, the District Court Judge enjoined the defendants, not only from further violations of *record-keeping provisions*, but also from violating *price-ceilings* with regard to the goods manufactured by them (R. 57-8a).

The two fundamental aspects of the regulations cited are (a) the record-keeping provisions, and (b) the price ceiling provisions.

The Circuit Court, remarking in its opinion that the question was new (R. 72a), based its affirmance of the District Court's injunction against price-ceiling violations upon the proposition that the defendants, by failing to maintain records required by GMPR, and failing to furnish OPA with information required by MPR 220, made it "practically impossible" for OPA to know whether defendants were violating price ceilings or not; and that as a consequence, it was not unlikely that price ceilings would be violated, and that it was not unreasonable to conclude that such a happening was within the range of probability, and to guard against it by injunction (R. 72a).

A footnote to the opinion (R. 72a) stated that the broad injunction was justified by the sufficiently close relation of records and prices, and by construing record-keeping provisions as a means to the end of ceiling-price control.

Jurisdiction.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925 (43 Stat. 938, U.S.C. Title 28, Section 347).

The order, judgment or decree of the United States Circuit Court of Appeals for the Third Circuit to be reviewed was entered December 27, 1945.

The Questions Presented.

(a) In an action by the Administrator of OPA for injunctive relief against a manufacturer of women's garments, where the only violation complained of is in failing to observe the record-keeping provision of the pertinent regulation, there being neither allegation nor proof that the defendant sold or threatened to sell his products at prices in excess of maximum ceiling prices, may the Trial Judge enter a decree enjoining defendant from, inter alia, selling at prices in excess of the ceiling-prices set up in the regulation?

(b) In such a case, is there a sufficiently close relation between failure to keep records and charging over-ceiling prices, so as to justify the broad scope of the injunction?

(c) In such a case, does a Court have the discretionary power to enter an injunction of such broad scope?

Reasons for Allowance of Writ.

The grounds relied upon by the petitioners for the allowance of the Writ are:

1. In holding that record-keeping violations of themselves justified the restraint of price-ceiling violations not charged, committed or threatened, and in the absence of any finding of fact that a price-ceiling violation was threatened or might be anticipated, the Circuit Court of Appeals for the Third Circuit has decided a federal question in a way probably in conflict with applicable decisions of this Court, as follows:

New York, New Haven and Hartford, etc. R. Co.
v. Interstate Commerce Commission, 200 U.S.
361, 26 S. Ct. 272, 50 L. Ed. 515.

N.L.R.B. v. Express Publishing Co., 312 U.S. 426,
61 S. Ct. 593, 85 L. Ed. 930.

May Department Stores Co. v. N.L.R.B., U. S. Supreme Court, Oct. Term, 1945, No. 39, decided
Dec. 10, 1945.

2. In holding that records and prices are sufficiently closely related under the rule of the Express Publishing case, *supra*, to justify a broad injunction, the Circuit Court of Appeals for the Third Circuit has rendered a decision in conflict with the decision of the Circuit Court of Appeals for the Second Circuit on the same matter: Bowles, Administrator OPA v. Sacher, et al., 146 F. 2nd 186.

3. The Circuit Court of Appeals for the Third Circuit has decided a specific important question of federal law which has not been but should be settled by this Court, to wit, whether violation of record-keeping provisions of OPA regulations per se justifies an injunction against price-ceiling violations which are not alleged, proven or shown to be intended, threatened or likely to occur.

Prayer.

WHEREFORE, your petitioners respectfully pray that a Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Third Circuit, commanding that Court to certify to and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the Record and all proceedings in the case numbered and entitled on the Docket of the Circuit Court of Appeals for the Third Circuit October Term, 1945, No. 8980, between Chester Bowles, Administrator, Office of Price Administration, appellee, and William Leithold and Emily Leithold, individually and as co-partners trading as Custom Maid Brassiere Company, appellants; and that the judgment or order of the Circuit Court for the Third Circuit be reversed by this Honorable Court, with directions that so much of the District Court Decree as enjoined violation of price-ceiling provisions of any act or regulation be stricken therefrom; and that your petitioners may have such other and further relief in the premises as may seem just and proper.

And your petitioners will ever pray.

ABRAHAM L. SHAPIRO,
SHAPIRO & SHAPIRO,
Attorneys for Petitioners.

